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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

## No. 116

**IN THE MATTER OF THE APPLICATION**

**OF**

**PAUL L. GAULT and MARJORIE GAULT,**
**Father and Mother of**
**GERALD FRANCIS GAULT, a Minor.**

**On Appeal from the Supreme Court of Arizona**

# BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE.

For the National Legal Aid and Defender Association:

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## BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE.

The National Legal Aid and Defender Association files this Brief Amicus Curiae pursuant to the written consent of the parties submitted herewith.

## OPINION BELOW.

Judgment of the Supreme Court of Arizona entered November 10, 1965, affirming dismissal of a Writ of Habeas Corpus by the Superior Court of Maricopa County. The opinion of the Supreme Court of Arizona is reported in 99 Ariz. 181, 407 P. 2d 760, and set forth in the Appellant's Jurisdictional Statement at pp. 25-42. The Superior Court of Maricopa County wrote no opinion. The Juvenile Court of Gila County wrote no opinion but issued an order of commitment dated June 15, 1964 set forth in the Appellant's Jurisdictional Statement at pp. 48-49.

## JURISDICTION.

The jurisdiction of this Court to review by appeal the judgment of the Supreme Court of Arizona is conferred by 28 U.S.C. Section 1257(2). Probable jurisdiction was noted on June 20, 1966.

## STATUTES INVOLVED.

The Juvenile Code of Arizona, Section 8-201 to 8-239 Arizona Revised Statutes, is set forth in full in the Jurisdictional Statement at pages 50-63.

## QUESTION PRESENTED.

Does the Juvenile Code of Arizona, Sections 8-201 to 8-329, Ariz. Rev. Stats., on its face or as construed and applied, violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution since it confers unlimited discretion upon a Juvenile Court, dispenses with procedural safeguards required by due process of law including: right to notice of the charges of delinquency; right to counsel; right to confrontation of adverse witnesses; right to cross examination of adverse witnesses; privilege against self-incrimination; right to a transcript of the proceedings; right to appellate review of the Juvenile Court's decision.

## INTEREST OF AMICUS CURIAE.

In the case at bar, the Supreme Court of Arizona has unequivocally held that due process does not require that an infant have the right to counsel in a juvenile court proceeding involving an alleged violation of the law. (Appellants' Jurisdictional Statement p. 37) Resolution of the precise issue thus pinpointed at bar is of vital concern to members of the National Legal Aid and Defender Association, many of whom regularly represent indigents in juvenile court.(*) The outcome of the instant matter will directly affect the continuing validity of such representation and its growth and vitality, because it must be presumed that the right to counsel in a juvenile court proceeding must enure to the benefit of the poor as well as those who can afford paid counsel. (*Griffin* v. *Illinois,* 351 U.S. 12)

The National Legal Aid and Defender Association (hereinafter referred to as NLADA) urges reversal of the judgment of the Supreme Court of Arizona in the case at bar in that it fails to meet minimum standards

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(*) The National Legal Aid and Defender Association has in excess of 1400 professional members, many of whom represent indigent persons in civil and criminal matters. Its membership also embraces the majority of the 577 Legal Aid Societies, public Defender offices, and assigned counsel systems throughout the United States. The extent to which these organizations represent indigents in juvenile court proceedings is governed by the provisions of the various Juvenile Court statutes, and the judicial philosophy of the various jurisdictions regarding the basic requirements of due process and the theory of *parens patriae.* (See Appendix 2a, b, c.)

suggested by the Defender Standards Committee of NLADA, adopted by its Assembly of Delegates, endorsed by the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association, and adopted verbatim by the House of Delegates of the American Bar Association. (The minimum standards are set forth *en toto* in Appendix 1a attached hereto.)

In their particularly relevant portions the minimum standards provide:

"Every Defender System should:

1. Provide legal representation for every person who is without financial means to secure competent counsel when charged with a felony, misdemeanor, *or other charge where there is a possibility of a jail sentence.*

• • • • •

3. *Provide representation immediately after the taking into custody or arrest,* at the first and every subsequent court appearance and at every stage in the proceeding, including appeal or other post-conviction proceedings to remedy error or injustice. The representation should extend to parole and probation-violation proceedings, extradition proceedings, *and proceedings involving possible detention or commitment of minors* or alleged mentally ill persons.

• • • • •

8. *Provide effectual notice of the available legal services to all persons who may be in need thereof.*

• • • • •" (emphasis added)

These minimum standards represent the crystallized sentiment of NLADA and its members. They are in accord with "Standards for Juvenile and Family Courts," prepared by William H. Sheridan in cooperation with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges. (U.S. De-

partment of Health, Education, and Welfare, Children's Bureau Publication Number 437—1966) In that publication, we find the following, pp. 56-57:

> "In at least one-third of the States the statutes now have provisions relating to the right to representation, notice of right to counsel, or the assignment of counsel or both. In still other States similar provisions have been established by rule of court.
>
> If there was any doubt as to whether there was a right to counsel it has been dispelled. It is less clear from the decisions as to whether there is a right to be advised and a duty to furnish counsel upon request. The recent statutory enactments, however, show a definite trend in this direction. As a component part of a fair hearing required by due process guaranteed under the 14th Amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the family is financially unable to employ counsel."

That is the position that the *amicus curiae* urges this Honorable Court to adopt.

## STATEMENT.

The Association adopts Appellants' Statement.

## SUMMARY OF ARGUMENT.

The right of counsel in any proceeding in which personal liberty is at stake is a basic requirement of the Sixth Amendment and the Due Process Clause of the 14th, regardless of the forum.

The Juvenile Court of Gila County deprived Gerald Gault of his Constitutional right to the effective assistance of counsel and to Due Process of law as guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States.

## ARGUMENT.

### I.

**The Juvenile Court Procedure in Arizona Which Does Not Follow the "Standards for a Defender System" Infringed Constitutional Guarantees of the Due Process Clause of the Fourteenth Amendment.**

The "Standards for a Defender System" are a policy statement of both NLADA and the American Bar Association of minimum requirements under the generative principle of due process of law. (Appendix 1a)

Previous standards, entitled "Standards for Defender Services," were silent on the right of counsel in juvenile court proceedings. (Appendix 1b)

The newly adopted standards reflect a growing concern of the legal profession for protection of rights of children in juvenile court proceedings.

This concern is well founded. On March 21, 1966, Mr. Justice Fortas, speaking for the Court in *Kent* v. *U.S.*, observed that:

> "• • • there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." 383 U.S. 541, 556.

The Standards provide that every Defender System should provide "legal representation for every person • • • charged with a felony, misdemeanor or other charge where there is a possibility of a jail sentence • • • The representation should extend to proceedings involving possible detention or commitment of minors • • •" More-

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over, in order that this be not merely a hollow right but one given practical implementation, the system must "provide effectual notice of the available legal services to all persons who may be in need thereof." (Standards Nos. 1, 3, 8, Standards for a Defender System). (Appendix 1a)

While in the case at bar it is not established whether or not Gerald Gault or his parents were "without financial means to secure competent counsel," (Standard No. 1, Standards for a Defender System), (Appendix 1a) it is clear that there was no counsel at the juvenile court hearing and that neither the defendant nor his parents were advised by the court of a right to have counsel.

The right of one accused of crime to have a lawyer existed in this country from the outset. In 1963, this Court held that an indigent accused is entitled to court appointed counsel in all felony cases. *Gideon* v. *Wainwright,* 372 U.S. 335. The United States Court of Appeals for the 5th Circuit has held upon the authority of *Gideon* v. *Wainwright* that an indigent accused is entitled to court appointed counsel in misdemeanor cases where his liberty is in jeopardy. *Harvey* v. *Mississippi,* 340 F. 2d 263; *McDonald* v. *Moore,* 353 F. 2d 106.

With all this concern for the rights of adults to counsel, it seems anomalous to us that such rights should be denied to a child. We submit that the constitutional guarantees of the effective assistance of counsel must be afforded to any person whose liberty is in jeopardy.

It is no answer to say that the instant proceedings are civil or non-criminal in nature. The fact remains that Gerald Gault has been deprived of his liberty for an indeterminate length of time which can extend until his 21st year; about six years. The United States Court

of Appeals for the District of Columbia Circuit has held that where a statute provides for a "hearing" the "right to be heard" when personal liberty is at stake requires the effective assistance of counsel in a juvenile court quite as much as it does in a criminal court. *Shioutakon* v. *District of Columbia,* 236 F. 2d 666, 669.

## II.

**The Arizona Procedure Is Contrary to the Trend in the United States in Dealing with Juvenile Matters.**

On August 3, 1966, the National Legal Aid and Defender Association mailed to approximately 40 of its member offices a questionnaire concerning matters relating to Juvenile Court practice in their respective jurisdictions, a copy of the letter and questionnaire appears as Appendix 2a; an Abstract of the results appears as Appendix 2b; and a recapitulation as Appendix 2c.

Twenty seven responded that they did handle juvenile cases in their jurisdiction.

In gathering this data, the NLADA sought to sample a cross section of states and jurisdictions as well as a variety of types of services including a purely assigned counsel system in Virginia, a Legal Aid Society in New York State and several varieties of Defender offices. The numerical and relative percentages of the responses to each question appears in Appendix 2c.

Special attention of the court is called to question 9, A through G, and 10 which touch upon constitutionally protected guarantees. Responses to Question 9 indicate that in 100% of the jurisdictions reporting, notice of the charges is given to the parents; in 78% one is advised

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of the right to counsel; the privilege against self-incrimination is protected in 70%. 49% follow the rules of evidence. (Q. 10)

The National Council of Juvenile Court Judges is presently conducting a research project on the role of the lawyer in juvenile court proceedings. While the Council recognizes the need and the right to competent counsel in such proceedings, it expresses the hope that the Court will not set rigid guidelines for counsel until research results are available some two years hence. It accurately observes that the precise function of a lawyer in juvenile court proceedings has never been clearly defined. (Appendix 3)

It should be clearly borne in mind that the *amicus curiae* at bar suggests no rigid guidelines for counsel, but simply urges that notice of the right of counsel be required in all juvenile hearings and counsel provided upon request of the indigent.

Other studies also indicate that there is a growing acceptance of counsel in juvenile court. For instance, in a 1963 survey of juvenile courts serving 75 of the largest metropolitan areas, this question was asked: Do you look with favor upon the appearance of attorneys in juvenile courts on behalf of children and parents? 91.4% of the judges answered yes. (Cf. "Lawyers in the Juvenile Courts," Field Training Materials (Mimeographed 1963) National Council of Juvenile Court Judges, Chicago, p. 94.)

## III.

**The Holding of the Court Below that a Child Is Not Entitled to Counsel in a Juvenile Court Proceeding Is Violative of His Rights Under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment.**

It has been accurately observed that "Of all of the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have." *Walter V. Schaefer, Federalism and State Criminal Procedure,* 70 Harv. L. Rev. 1, 8.

Surely the above observation needs no embellishment. If it does, we need look no further than the stirring words of Mr. Justice Sutherland in *Powell* v. *Alabama,* 287 U.S. at 68-69:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of the law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

If this be true with regard to "the intelligent and educated layman", then a case of a child in a juvenile court presents an *a fortiori* situation.

But, the Supreme Court of Arizona held in the case at bar "we do not think due process requires that an infant have a right to counsel. The parent and the probation officer may be relied upon to protect the infant's interests." (*Application of Gault*, 407 P. 2d 760, 767.)

However, the record reveals that the infant's mother tried in vain to obtain confrontation of the complaining witness. (T. 42) And as for the probation officer, he was the only prosecution witness against the infant. He was the one who compiled inculpatory evidence against the infant. He was the one who secured an admission from the infant: "when I asked him to recite Mrs. Cook's phone number, he recited it like it was his own." (T. 65) He was the one who filed the petition: "we set no specific charge in it, other than delinquency." (T. 68) He failed to subpoena the complaining witness. He did not advise the infant of his privilege against self-incrimination. Yet, the court below held that he could be relied upon to "protect the infant's interests."

Can it be said in truth that the probation officer adequately took the place of a lawyer? A lawyer would not have been permitted to represent conflicting interests or to reveal anything said to him under the attorney/client privilege. Moreover, a lawyer would have been duty bound to inform the infant of his 5th Amendment privilege against self incrimination. A lawyer would have objected to hearsay and demanded confrontation of the complaining witness. In short, the right to counsel affects the ability of the infant to assert any other rights he may have.

As this Honorable Court said in *Kent* v. *U.S.*, *supra*, at p. 561:

> "The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice."

## CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment should be reversed.

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## APPENDIX 1a

### "STANDARDS FOR A DEFENDER SYSTEM"

Each jurisdiction should have an adequate defender system to provide legal representation for persons who are financially unable to employ competent counsel in criminal proceedings. Each defender system should be selected locally in accordance with the needs and traditions of the jurisdiction to be served. Except in rare instances, experience indicates that an uncoordinated assigned-counsel system will provide competent representation only where the number of indigent-accused is not great. Where an assigned-counsel system is in effect, it should be administered to insure uniform rotation of counsel whose experience is commensurate with the seriousness of the charge. In urban areas the community should consider the institution of a public defender or other centrally-administered service.

Every defender system should:

1. Provide legal representation for every person who is without financial means to secure competent counsel when charged with a felony, misdemeanor or other charge where there is a possibility of a jail sentence.

2. Provide standards of eligibility that do not extend assistance to one having sufficient funds or resources to secure competent private counsel but, at the same time, are not so stringent as to create a class of unrepresented accused.

3. Provide representation immediately after the taking into custody or arrest, at the first and every subsequent court appearance and at every stage in the proceeding, including appeal or other post-conviction proceedings to remedy error or injustice. The representation should extend to parole and probation-violation proceedings, extradition proceedings, and proceedings involving possible detention or commitment of minors or alleged mentally ill persons.

*(Appendix 1a)*

4. Provide experienced, competent, and zealous counsel, independent and free from political or economic influence. Such counsel owes his client his undivided loyalty consistent with the highest standards of professional ethics and integrity.

5. Provide counsel compensation that is adequate and in keeping with his experience and ability. In the case of a public defender, compensation should not be disproportionate to that of the prosecution, lest there be a disparity in professional ability between the prosecution and defense.

6. Provide sufficient funds for the uniform availability of investigation, psychiatric examinations, and other necessary expert assistance.

7. Provide a place in the court and jail building for private interviews, consultations, and necessary examinations between the accused and his counsel, investigators, and other experts.

8. Provide effectual notice of the available legal services to all persons who may be in need thereof.

9. Provide assistance in having reasonable bail set, and in appropriate cases, a release without bail.

10. Maintain adequate records on each and every case for the proper administration of justice.

11. Encourage the interest of law students and law schools in the administration of justice in criminal cases.

12. Enlist the support of the community, the bar associations, and agencies oriented to rehabilitation.

Approved by: Board of Directors, Defender Committee, and Assembly of Delegates of the National Legal Aid and Defender Association on November 19, 1965, and House of Delegates, The American Bar Association on February 21, 1966.

## APPENDIX 1b

### STANDARDS FOR DEFENDER SERVICES

*Adopted by the National Legal Aid and Defender Association, October 1959. Adopted by the House of Delegates of the American Bar Association on recommendation of the Standing Committee on Legal Aid Work February 1960*

The Defender system of every state should:

1. Provide counsel for every indigent person unable to employ counsel who faces the possibility of the deprivation of his liberty or other serious criminal sanction;
2. Afford representation which is experienced, competent, and zealous;
3. Provide the investigatory and other facilities necessary for a complete defense;
4. Come into operation at a sufficiently early stage of the proceedings so as to fully advise and protect the defendant;
5. Assure undivided loyalty of defense counsel to the client;
6. Include the taking of appeals and the prosecuting of other remedies, before or after conviction, considered by the defending counsel to be in the interest of justice;
7. Maintain in each county in which the volume of criminal cases requiring assignment of counsel is such as to justify the employment of at least one full-time lawyer to handle the work effectively, a Defender office, either as a public office or as a quasi-public or private organization;
8. Enlist community participation and responsibility and encourage the continuing cooperation of the organized bar.

## APPENDIX 2a

*(Letterhead Of)*
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

August 3, 1966

I am enclosing a questionnaire which is part of a survey to determine practices in juvenile matters throughout the country.

The National Legal Aid and Defender Association is now considering filing a brief amicus curiae in the case of *In re Gault* now pending before the Supreme Court of the United States.

The answers which you give as well as those of the thirty other offices which have been selected will do much to help us determine what course of action will be followed.

Please complete and return this important questionnaire in the enclosed envelope just as soon as possible.

Thank you very much for your assistance in this matter.

Yours very truly,
L. Michael Getty
Director of Defender Services

LMG/slp
Enclosures

*(Appendix 2a)*

*(Letterhead Of)*

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

## SURVEY OF PROCEDURES IN JUVENILE MATTERS

The following survey is being taken in conjunction with a proposal that NLADA file a brief amicus curiae in a case pending before the Supreme Court of the United States (*In re Gault*) involving the constitutional rights of a minor to a fair trial.

1. the name of your office:
   person reporting:
   date completed:

2. Do you have jurisdiction to represent juveniles in your local juvenile court or its equivalent?

3. State the total number of juvenile court cases in which you represented:
   A. in 1965
   B. during the first half of 1966

4. What test or tests are used by the court to determine if counsel should be appointed?

5. Does the court follow a strict or liberal standard of eligibility for the appointment of counsel?

6. Does the court in your jurisdiction commonly appoint counsel for the parents as well as the child if there is an apparent conflict of interest?

   YES NO

7. State the point in the proceeding in which your office most usually becomes involved in a juvenile court case.

8. State the time in the proceeding in which your office usually becomes involved in crimes other than in the juvenile court.

*(Appendix 2a)*

9. Are the following rights protected in your jurisdiction relative to the prosecution of juveniles in the juvenile court?

(Circle and make explanation if necessary please)

A. Notice of the charges to the child?
YES NO
To his parents?
YES NO

B. Right to counsel?
YES NO
Advised of right?
YES NO
Furnished counsel by the state if necessary?
YES NO

C. Confrontation of witnesses?
YES NO

D. Cross-examination of witnesses?
YES NO

E. Right to appellate review?
YES NO

F. Transcript of the proceedings?
YES NO

G. Privilege against self-incrimination?
YES NO

10. Does the juvenile court follow the rules of evidence?
YES NO

11. Is the system presently followed in your jurisdiction fair to the:

| | | |
|---|---|---|
| Child | YES | NO |
| Parents | YES | NO |
| Society | YES | NO |

## APPENDIX 2c

### RECAPITULATION

SURVEY OF PROCEDURES IN JUVENILE MATTERS

1. The name of your office:
   Person reporting:
   Date Completed:

2. Do you have jurisdiction to represent juveniles in your local juvenile court or its equivalent?

| | | |
|---|---|---|
| Total Replies | 27 | 100% |
| "Yes" | 27 | 100% |

3. State the total number of juvenile court cases in which you represented: (See Appendix 2b.)

4. What test or tests are used by the court to determine if counsel should be appointed?

| | | |
|---|---|---|
| Total Replies | 26 | 100% |
| "Financial Ability of Parents and/or Child to Retain Private Counsel" | 13 | 50% |
| "Possible Certification out of Juvenile Court" | 4 | 15% |
| "Gravity of the Offense" | 3 | 12% |
| "Subjective Judgment of the Court" | 3 | 12% |
| "Upon Request" | 2 | 7% |
| "In Every Case" | 1 | 4% |

5. Does the court follow a strict or liberal standard of eligibility for the appointment of counsel?

| | | |
|---|---|---|
| Total Replies | 26 | 100% |
| "Liberal" | 22 | 85% |
| "Strict" | 4 | 15% |

*(Appendix 2c)*

6. Does the Court in your jurisdiction commonly appoint counsel for the parents as well as the child if there is an apparent conflict of interest?

| | | |
|---|---|---|
| Total Replies | 26 | 100% |
| "Yes" | 8 | 30% |
| "No" | 15 | 58% |
| "Uncertain" | 3 | 12% |

7. State the point in the proceeding in which your office most usually becomes involved in a juvenile court case.

| | | |
|---|---|---|
| Total Replies | 26 | 100% |
| "Prior to First Hearing" | 9 | 34% |
| "At or Following First Hearing | 10 | 39% |
| "At or Following Initial Court Appearance" | 5 | 20% |
| "No Cases Handled" | 2 | 7% |

8. State the time in the proceeding in which your office most usually becomes involved in crimes other than in the juvenile court.

| | | |
|---|---|---|
| Total Replies | 26 | 100% |
| "Prior to First Hearing" | 7 | 27% |
| "At or Following Preliminary Hearing But Prior to Arraignment" | 4 | 15% |
| "At or Following First Court Appearance For Arraignment or Indictment" | 14 | 54% |
| "No Cases Handled" | 1 | 4% |

*(Appendix 2c)*

9. Are the following rights protected in your jurisdiction relative to the prosecution of juveniles in the juvenile court? (Circle and make explanation if necessary please.)

| | | | *Total Replies* |
|---|---|---|---|
| A. Notice of the charges to the child? | | | |
| Yes (24) 89% | No (3) 11% | | (27) 100% |
| To his parents? | | | |
| Yes (27) 100% | No | | (27) 100% |
| B. Right to counsel? | | | |
| Yes (21) 78% | No (5) 19% | | (27) 100% |
| Uncertain (1) 3% | | | |
| Advised of right? | | | |
| Yes (21) 78% | No (6) 22% | | (27) 100% |
| Furnished counsel by the state if necessary? | | | |
| Yes (20) 74% | No (7) 26% | | (27) 100% |
| C. Confrontation of witnesses? | | | |
| Yes (24) 89% | No (3) 11% | | (27) 100% |
| D. Cross-examination of witnesses? | | | |
| Yes (25) 93% | No (2) 7% | | (27) 100% |
| E. Right to appellate review? | | | |
| Yes (24) 89% | No (3) 11% | | (27) 100% |
| F. Transcript of the proceedings? | | | |
| Yes (15) 56% | No (11) 41% | | (27) 100% |
| Uncertain (1) 3% | | | |
| G. Privilege against self-incrimination? | | | |
| Yes (19) 70% | No (5) 19% | | (27) 100% |
| Uncertain (3) 11% | | | |

*(Appendix 2c)*

10. Does the juvenile court follow the rules of evidence?

| | | | | *Total Replies* |
|---|---|---|---|---|
| Yes (13) 49% | | No (7) 26% | | (27) 100% |
| Uncertain (1) 3% | | Qualified Yes (6) 22%(*) | | |

11. Is the system presently followed in your jurisdiction fair to the:

| | | | | *Total Replies* |
|---|---|---|---|---|
| Child | Yes (17) 65% | No (7) 27% | | |
| | Uncertain (1) 4% | (**) (1) 4% | | (26) 100% |
| Parents | Yes (18) 69% | No (6) 23% | | |
| | Uncertain (1) 4% | (**) (1) 4% | | (26) 100% |
| Society | Yes (20) 77% | No (4) 15% | | |
| | Uncertain (1) 4% | (**) (1) 4% | | (26) 100% |

(*) Two "yes" replies exclude the hearsay rule. Three "yes" replies indicate a liberal interpretation. One "yes" reply indicates that the rule "depends on the individual judge"

(**) These responses indicate that: "procedure is very loosely prescribed by statute and fairness or unfairness depends very much upon the individual characteristics of the judge."

## APPENDIX 3

*(Letterhead Of)*
NATIONAL COUNCIL OF JUVENILE COURT JUDGES

September 19, 1966

National Legal Aid and Defender Association
American Bar Center
1155 East 60th Street
Chicago, Illinois

Re: Amicus Brief in the Gault Case

Gentlemen:

The right to counsel means the right to competent counsel. In delinquency hearings, however, the role of counsel has never been clearly defined. There is considerable disagreement as to whether counsel should conduct himself as he would in adversary proceedings or whether he should assist the court in its attempt to help the child. In the latter role, counsel does not function as a trial lawyer in the traditional sense but rather serves to interpret the court hearing to the child and also helps elicit information from the alleged delinquent whom he represents.

To identify the most effective role for counsel, both at the adjudicatory and dispositional stages, the National Council of Juvenile Court Judges is now undertaking, with grant assistance from the Ford Foundation, the Major Research Project on the role of the lawyer in the Juvenile Court. It is hoped that the court will not set rigid guidelines for counsel until research results are available.

In Chicago, Cleveland and Newark, this project is now under way. In each city attorneys have been engaged to represent children in delinquency hearings. In two of the cities the children represented will be interviewed by the

*(Appendix 3)*

Project's research staff in order to evaluate the impact of legal representation. These cases will be compared with a control group. Changes in attitude and differences in effect, if any, at disposition will be noted. Rates of recidivism will also be studied in follow-up research in both groups.

It is expected that at the conclusion of two years, definitive information will be available which will assist both the bench and the bar in providing counsel which is really competent to provide representation in Juvenile Delinquency hearings.

Very truly yours,

National Council of Juvenile Court Judges,

John F. X. Irving,
Executive Director